IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 16041 of 2005(I)

PETITIONER:

KARTHYAYANI, W/O.LATE SANKU MADHAVAN,
MULLASSERIVELIYIL, CHARAMANGALAM, MUHAMMA P.O.,
PIN-688 525, ALAPPUZHA DIST.

BY ADV. SRI.K.K.SATHISH.

RESPONDENTS:
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1. **UNION OF INDIA,**
   REPRESENTED BY THE SECRETARY, MINISTRY OF
   HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION,
   LOK NAYAK BHAWAN, KHAN MARKET, NEW DELHI-110 003.

2. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY,
   GENERAL ADMINISTRATION (FFP.A) DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.K.C.SANTHOSH KUMAR, ADDL.CGSC,
GOVERNMENT PLEADER SRI. V.T.K. MOHANAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.16041/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT.

EXT.P.2: COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR, ALLEPPEY VIDE ORDER NO. R. DIS. 53313/76/F6 DTD. 17/06/1976.

EXT.P.3: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF S.S.S PENSION DTD. 13/07/1998.

EXT.P.4: COPY OF THE PKC ISSUED BY SRI. S.KUMARAN, EX-MP DTD. 01/05/1973.

EXT.P.5: COPY OF THE APPLICATION SUBMITTED BY PETITIONER'S LATE HUSBAND FOR GRANT OF KERALA FREEDOM FIGHTER'S PENSION TO THE DISTRICT COLLECTOR, ALLEPPEY THROUGH THE TAHSILDAR, CHERTHALA DT. 21/10/1972.

EXT.P.6: COPY OF THE LETTER NO. 6/1/97-FF (P) DTD. 07/04/2003 ISSUED BY THE R.1. TO THE R.2.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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W.P.(C) .NO.16041 of 2005-I

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Dated this the 20th day of August, 2007

JUDGMENT

The petitioner is the widow of late Shri Sanku Madhavan who was a prominent freedom fighter who had actively participated in the Punnapra – Vayalar Movement during freedom struggle. On account of his participation in the said struggle, he was arrayed as the 5th accused in C.C. No.3/1950 on the file of the First Class Magistrate Court, Cherthala. The Magistrate after trial found him guilty, convicted and sentenced him to undergo S.I. for one year under Section 9(1) read with Section 5 of Ordinance V of 1125 M.E. Thereupon, he had undergone imprisonment in the Central Prison, Trivandrum for a period of 9 ½ months from 15.3.1950 to 1.1.1951 till the expiry of the sentence after getting a remission of the balance period. This is evidenced by Ext.P1 which is the true extract of the convict register of Central Prison, Trivandrum. Ext.P2 is the order sanctioning Kerala Freedom Fighters' Pension to the late husband of the petitioner. He died on 1.8.1984 and after his death, the petitioner is getting the benefit of dependent family pension under the said scheme.

2. Punnapra – Vayalar Movement was recognised by the Government

of India for grant of SSS Pension with effect from 20.1.1998 and the petitioner filed Ext.P3 application dated 13.7.1998 for grant of the said pension. Ext.P4 is the Personal Knowledge Certificate issued by Shri S. Kumaran Ex.M.P. stating that the late husband of the petitioner was an accused in the case connected with Punnapra – Vayalar struggle and he was in jail nearly for one year.

3. The petitioner has approached this court since no action was taken by the respondents in her application. In the counter affidavit filed by the first respondent, in paragraph 7 it is stated that the application of the petitioner was sent to the State Government vide letter NO.129/3/Genl(1)/ 98-FF-SZ dated 27.8.1998 for their mandatory verification-cum-entitlement to pension report. The requisite report is still awaited from the State Government.

4. In the counter affidavit filed by the second respondent, the stand taken in paragraph 6 is that the District Collector reported that case No.CC 30/1950 is not seen included in the register of Punnapra – Vayalar cases kept in his office. Further, the claimed suffering is after independence. It is averred that a verification report along with the application and enclosures have been forwarded to Government of India as per Government letter No.68532/FFP.A2/2005/GAD dated 3.6.2006. Obviously, it was forwarded without the recommendation, which is mandatory.

5. Along with the reply affidavit, the petitioner has produced two

documents, viz.,Exts.P5 and P6. Ext.P5 is the copy of the application submitted before the District Collector, Alappuzha for grant of State pension by the late husband of the petitioner. Ext.P6 is the communication issued by the Government of India to the State Government that in the case of Punnapra – Vayalar struggle even if the entire period of claimed suffering was after independence, it will be covered under the scheme.

6. Learned counsel for the petitioner relying upon Ext.P5, contended that column No.3 therein gives details of the suffering of the petitioner in connection with Punnapra – Vayalar struggle. In answer to column No.3, it has been specifically stated that he was arrested pursuant to the warrant of arrest issued by the First Class Magistrate, Cherthala and was convicted for one year and he had undergone the same in the Central jail. It is based on this that the State Government has granted pension. Therefore, learned counsel is right in submitting that the stand taken in paragraph 6 of the counter affidavit that C.C. NO.30/2005 is not related to Punnapra – Vayalar struggle, is absolutely incorrect. In Ext.P1 column 11 refers to the offence as Section 9(1) (a) read with Section 5 of Ordinance V of 1125. Further, the State Government had granted pension to the late husband of the petitioner based on his imprisonment in connection with Punnapra – Vayalar struggle itself. This is now being continued in favour of the petitioner also.

7. The stand taken in the counter affidavit does not appear to be

correct in the light of the Personal Knowledge certificates issued by S. Kumaran Ex.MP. Also. The want of recommendation by the State is the only apparent reason apparently which has delayed the sanction of pension for the petitioner. The other reason stated in paragraph 6 that the claimed suffering is after independence, is not correct in the light of Ext.P6 letter dated 7.4.2003 addressed to the Principal Secretary to the Government of Kerala stating that the condition of imprisonment of six months in the main land jails before independence would not apply in case of Punnapra – Vayalar struggle being a movement for merger of erstwhile Princely State and even if the entire period of claimed suffering was after independence, it will be covered under the Scheme.

8. In the light of the above findings, the second respondent is directed to forward a fresh mandatory report recommending the case of the petitioner for grant of SSS Pension, to the first respondent within a period of six weeks from the date of receipt of a copy of this judgment. Upon receipt of the same, the first respondent will pass appropriate orders in the light of the observations made above, within a further period of two months thereafter. The first respondent shall also consider grant of arrears of pension with effect from the date of Ext.P3 application dated 13.7.1998.

(T.R. Ramachandran Nair, Judge.)